



June 25, 2019

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: WC Docket No. 18-141 - Petition of USTelecom for Forbearance

Dear Ms. Dortch:

Call One Inc. ("Call One") submits this *ex parte* letter to respond to comments recently filed in this docket, including USTelecom's June 14, 2019 comments. Call One previously filed comments in the docket on August 6, 2018. As with those comments, Call One's comments are limited to the Section 251(c)(4) resale obligation.

These comments address two points. First, the record already demonstrates that the relevant market is very different for residential/consumer customers and for different types of business customers. As such, providers like Call One still rely on resale lines purchased from incumbent local exchange carriers, and those lines, while they have declined in number as we have deployed our own facilities, still make up a substantial percentage of Call One's lines. Second, the Commission should consider the practical and policy effects of eliminating the (c)(4) resale obligation – specifically an uneconomic financial gain for the ILECs that will enhance their ability to manipulate wholesale pricing to impede or reduce competition.

The Relevant Business Markets are Different from Each Other and from the Consumer Market

We agree, in part, with some commenters (e.g. Granite) that there may be a separate market for copper loops since those loops provide electrical conductivity required with certain essential services, like alarm monitoring and elevator lines. However, we think the more significant market definition issue requires correctly identifying the various business markets for voice and data local exchange services. We believe that market is divided roughly into three segments: Small and Medium Businesses (SMBs), Small and Medium Enterprises (SMEs) and Large Enterprises. We agree that the Large Enterprise market is more competitive than the SME segment, and that the SME segment is more competitive than the SMB market. However, competitors to ILECs serving SMBs and some multi-location SMEs still require access to ILECs loops in order to provide customers comprehensive telecommunications solutions. Although Call One has aggressively deployed and marketed IP-based services from our own switches to replace ILECs loops,



normal capital constraints and service availability have constrained Call One's ability to replace all ILEC provided loops. Therefore, we remain dependent upon the ILECs in order to provide service to our SMB and some multi-location SME customers. We further note that USTelecom's June 14 Comments, see, e.g. Table 1 of those Comments, did not address these separate business market segments in its analysis. For these reasons and the reasons stated in our initial Comments, to the extent that the Commission is inclined to grant forbearance from the 251(c)(4) resale obligation, we urge that it be limited to Large Enterprise customers, and not include SMB and SME customers.

Finally, we note that while wireless services may be competitive alternatives for the residential or consumer markets, the vast majority of business customers have not adopted wireless as a replacement for wireline telecommunications services. As such, wireless services cannot appropriately be considered as a competitive alternative for business customers in any of the three business market segments.

#### Forbearance from the Wholesale Resale Obligation Will Create Strong Anti-Competitive Incentives

In addition to considering the effect of forbearance on various business customer market segments, the Commission should also consider the policy effects of forbearing from the 251(c)(4) "wholesale resale" obligation. USTelecom fails to address the negative, anti-competitive effects of such forbearance. These are easily demonstrated by examining the differences between the 251(c)(4) wholesale resale obligation and the 251(b)(1) resale-at-retail obligation. As discussed in our initial comments, there are two significant differences between the two obligations: the wholesale resale obligation from which USTelecom seeks forbearance, requires ILECs: (1) to offer a wholesale (avoided-cost) discount on resale services and (2) to offer long-term retail promotions for resale.

Thus, if the Commission forbears from the 251(c)(4) obligation, two things will result: First, while the ILECs will still have to resell local exchange services under 251(b)(1), they will immediately recognize unearned, uneconomic profits. This is true because they will continue to avoid the same costs they avoid by reselling the same services, **and** they will be permitted to charge their competitors for those non-incurred costs! For example, assume the retail price of a resale service is \$100 and that an ILEC's avoided (non-incurred) costs (marketing, customer service, billing, e.g.) when it sells at wholesale rather than retail are \$20, generating a current wholesale resale price to competitors of \$80 (\$100 - \$20). If the Commission grants forbearance from 251(c)(4), the ILECs will now be able to charge their competitors \$20 more for the same services, even though the ILECs' cost remain the same.

Second, forbearance from the 251(c)(4) obligation will create a strong anti-competitive incentive for ILECs to offer customers "promotions" that they will no longer have the obligation to offer to competitors. For example, consider that same \$100 service. If the Commission grants forbearance, the ILECs could immediately offer a retail "promotion" for that same service at \$80. The ILECs competitors will have to



pay the ILEC the full retail, non-promotional price (\$100) for that same service, so the only way for those competitors to compete with the ILEC will be to sell the service at a substantial loss, specifically—in our example—a 40% loss: \$20 (representing the difference between the resale price (\$100) and the promotional retail price (\$80) **and** another \$20 (representing the competitor's costs (customer service, billing, marketing, e.g.) for selling the ILEC's service at retail, measured by the ILEC's avoided cost when it sells at wholesale rather than retail.) Through such a pricing scheme, the ILECs will not only be able to stop further customer losses, but also win back customers from their competitors solely based on anticompetitive practices.

Thus, forbearing from the 251(c)(4) obligation will allow the ILECs to impose uneconomic costs – cost that they never even incur – on their competitors, as well as creating strong incentive for the ILECs to use promotions to engage in anticompetitive pricing to reverse the more than 23 years of competition the Act unleashed.

For these reasons, and the reasons in our initial Comments, we respectfully urge the Commission not to forbear from the Section 251(c)(4) resale obligation.

Sincerely,

A handwritten signature in blue ink, reading "H. Edward Wynn", is positioned above a horizontal line.

H. Edward Wynn  
Executive Chairman

A handwritten signature in blue ink, reading "Christopher Surdenik", is positioned above a horizontal line.

Christopher Surdenik  
Chief Executive Officer